



1-30-06

PCT

Application No. (if known): 10/520,056; Conf. #9847

Attorney Docket No.: 04270/0202280-US0

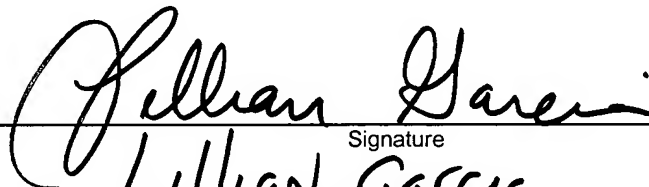
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Renewed Request For Refund (6 pages)

Tabs A-D

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Docket No.: 04270/0202280-US0  
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Christopher B. Phelps et al.

U.S. Application No.: 10/520,056

Confirmation No.: 9847

International Application No. PCT/GB03/02848

I.A. Filing Date: July 3, 2003

Art Unit: Not Yet Assigned

For: NUCLEAR HORMONE RECEPTOR

Examiner: Not Yet Assigned

**RENEWED REQUEST FOR REFUND**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Renewed Request is submitted responsive to the Decision dated December 30, 2005, denying Applicants' refund request in the amount of \$2,610.00 for the above-captioned patent application. Applicants respectfully request, through their undersigned attorneys and agents, that the Commissioner reconsider and grant their previous Request for Refund pursuant to 37 C.F.R. § 1.26 for the \$2,610.00 charged. Copies of the following documents, which are discussed in the below Remarks, are attached to facilitate consideration of this Renewed Request.

Tab A: a copy of the "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371" (the "371 Transmittal") as submitted December 29, 2004;

Tab B: (Redacted) Monthly Statement of Deposit Account No. 04-0100, dated January 31, 2005;

Tab C: (Redacted) Monthly Statement of Deposit Account No. 04-0100, dated August 2005; and

Tab D: a copy of the U.S. Patent and Trademark Office Decision dated December 30, 2005 (the “Decision”).

The U.S. Patent and Trademark Office (the “PTO”) erred when it charged Applicants the Examination, Search, Excess Claim of two separate charges, Multiple Dependent Claim, and Application Size Fees for this application. Payment of those fees was not authorized. Those fees, which total \$2,610.00, should therefore be refunded to Deposit Account No. 04-0100 of the undersigned attorneys/agents. The reasons for this are set forth in the below Remarks.

### **REMARKS**

#### **I. Background**

This application is a 371 of International Patent Application No. PCT/GB03/02848 (the “PCT Application”). On December 29, 2004, Applicants’ undersigned attorneys/agents submitted a copy of the PCT Application to the United States Designated/Elected Office along with a “Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371” (hereinafter referred to as the “371 Transmittal”). A copy of that 371 Transmittal is attached hereto, at Exhibit Tab A. The 371 Transmittal was accompanied by a check in the amount of \$300.00 to cover the Basic National Fee. However, no payment was submitted to cover any other fees. Instead, the 371 Transmittal authorized the Commissioner “to charge any additional fees which may be *required* or credit any overpayment to Deposit Account No. 04-0100 [the ‘Deposit Account’].” Tab A at page 2, Box 21(c) (emphasis added). This box was checked solely to ensure safe entry of the application into the U.S. national phase through charge of the only necessary fee, the \$300.00 Basic National Fee, in the event that the check became separated from the file.

On or about January 12, 2005 the PTO charged an Examination Fee of \$200.00 for this application to the Deposit Account. A \$400.00 Search Fee, \$400.00 Excess Claim Fee, \$360.00 Multiple Dependent Claim Fee, \$250.00 Application Size Fee, and \$1,000.00 Excess Claim Fee for this application were charged to the Deposit Account on or about August 31, 2005. Copies of monthly Deposit Account Statements showing these charges are attached hereto, at Exhibit Tabs B

and C, respectively.<sup>1</sup> Applicants filed a Request for Refund on October 3, 2005, requesting that these Fees be refunded and credited to the Deposit Account. The PTO issued a decision denying that refund request on or about December 30, 2005 (the “Decision”). A copy of the Decision is attached here at Tab D. The Decision stated that the Request for Refund had been denied because “[t]he authorization to charge any additional fees needed was selected for this application” (see Tab D). The Decision does not mention, and the PTO apparently did not consider, that the selected box only authorized the Commissioner “to charge any additional fees which may be *required*.” Tab A at page 2, Box 21(c) (emphasis added).

## II. Request for Reconsideration

In response to the Decision, Applicants respectfully request that the PTO reconsider the original Request for Refund for the \$200.00 Examination Fee, \$400.00 Search Fee, \$400.00 Excess Claim Fee, \$360.00 Multiple Dependent Claim Fee, \$250.00 Application Size Fee, and \$1,000.00 Excess Claim Fee, for a total of \$2610.00. As explained above, the 371 Transmittal submitted with this application (Tab A) only authorized the Commissioner of Patents to Charge any additional fees that may be *required* – i.e., fees whose payments were required to effect entry into the national stage and avoid abandonment of this application. See Tab A at page 2, Box 21(c). The Examination, Search, separately charged Excess Claim, Multiple Dependent Claim, and Application Size Fees charged for this application were not required, neither to begin national phase entry nor to avoid abandonment of this application. Hence, the payment of these fees was not authorized and they should be refunded.

### A. Payment of the Examination, Search, separately charged Excess Claim, Multiple Dependent Claim, and Application Size Fees Was Not Required To Begin Entry into the National Stage

37 C.F.R. § 1.495(b) sets forth what is required for entering the national stage in the United States. In particular, this rule states that:

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<sup>1</sup> The PTO charged an additional Search Fee of \$500.00 to the Deposit Account on or about January 12, 2005. See Tab B. However, that Search Fee was refunded on or about August 31, 2005. See Tab C. Accordingly, Applicants are not requesting a refund of the additional Search Fee here.

To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of thirty months from the priority date:

- (1) A copy of the international application ... and;
- (2) The basic national fee (see § 1.495(a)).

Notably, Rule 495(b) does not require payment of the Examination, Search, Excess Claim, Multiple Dependent Claim, and Application Size Fees to effectively enter national phase. Rather, the Rules of Practice provide for the late submission of the Search, Examination, and Application Size Fees by the Applicants. Specifically, 37 C.F.R. § 1.495(c)(1) provides, in relevant part, that:

If applicant complies with paragraph (b) of this section before expiration of thirty months from the priority date, the Office will notify the applicant if he or she has omitted any of ...

- (iii) The search fee set forth in § 1.492(b);
- (iv) The examination fee set forth in § 1.492(b); and
- (v) Any application size fee required by § 1.492(j).

Rule 495(c)(2) then provides that the Notice must set forth a time period to allow for the late payment of these fees. *See also* M.P.E.P. § 1893.01(a)(1). Hence, payment of Search, Examination, and Application Size Fees for this application is not **required** to begin entry into the national stage. An application is not abandoned if those fees are not submitted to begin national phase entry. Rather, the PTO's Rules of Practice and Manual of Patent Examining Procedure (M.P.E.P.) allow and provide established procedures for the late payment of these fees.

**B. Payment of the Examination, Search, separately charged Excess Claim, Multiple Dependent Claim, and Application Size Fees Was Not Authorized By Applicants**

On December 29, 2004, Applicants began the national phase entry of the PCT application into the United States by submitting a copy of that application along with a check as payment of the Basic National Fee. Applicants also submitted a 371 Transmittal (Tab A), which authorized the Commissioner of Patents "to charge any additional fees *which may be required*" to the Deposit Account of their attorneys/agents. Tab A at page 2, Box 21 (c) (emphasis added). This

371 Transmittal did not authorize the PTO to charge any and all fees that *may* be needed for this application *in the future*. It authorized only the payment of fees that were ***required*** to begin national phase entry of the application, and avoid abandonment. As explained above, this authorization is solely to save the application if the check for the Basic National Fee, the only ***required*** fee, were separated from the file.

As explained above, the Examination, Search and Application Size Fees were not required to avoid abandonment of this application. To the contrary, both the PTO Rules of Practice and the Manual of Patent Examination Procedure (M.P.E.P.) establish that these fees may be paid after Applicants' initial 371 submission. *See* 37 C.F.R. § 1.495(b) and M.P.E.P. § 1893.01(a)(1). The Rules of Practice and the M.P.E.P. also set forth the standard procedure by which the PTO "shall" notify Applicants that these fees have been omitted, and provide a deadline for their late payment. *See* 37 C.F.R. § 1.495(c) and M.P.E.P. § 1893.01(a)(1).

The Excess Claim Fees of two separate charges and the Multiple Dependent Claim Fee are also not required to enter the national phase as they are not in 37 C.F.R. § 1.495(b). Furthermore, an authorization to charge "the filing fee" ***was not*** given, an authorization of such that is interpreted by the PTO to charge excess claim fees (*see* M.P.E.P. § 509.01, subsection I). Only an authorization of "to charge any additional fees which may be ***required***" (emphasis added) was given at page 2, Box 21(c) of the 371 Transmittal (at Tab A). Therefore, since the Excess Claim and Multiple Dependent Claim Fees are ***not required***, they ***were not authorized*** by the statement "to charge any additional fees *which may be required*."

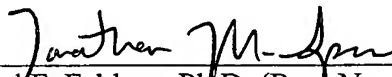
Since payment of the Examination, Search, separately charged Excess Claim, Multiple Dependent Claim, and Application Size Fees were not required to avoid abandonment, their payment was not authorized in Applicants' 371 Transmittal. Charging those fees to the Deposit Account actually violates established PTO procedures and Rules of Practice. Instead, the PTO should have issued a Notice allowing for the late payment of those fees, along with completion of the other requirements, such as submission of an executed declaration under 35 U.S.C. § 115; 37 C.F.R. §§ 1.51(b)(2) and 1.63.

### III. Conclusion

For all of the foregoing reasons, Applicants respectfully submit that the PTO erred when it charged Examination, Search, separately charged Excess Claim, Multiple Dependent Claim, and Application Size Fees for this application to the Deposit Account. Those fees were not required to begin national phase entry or to avoid abandonment of this application. The 371 Transmittal therefore did not authorize the Commissioner to charge those fees to the Deposit Account. Applicants therefore respectfully request that their previous Request for Refund be reconsidered and granted; and that the Search, Examination and Application Size Fees totaling \$2610.00 be refunded to the Deposit Account No. 04-0100.

Dated: January 27, 2006

Respectfully submitted,

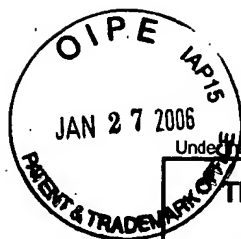
By:   
Paul F. Fehlner, Ph.D. (Reg. No. 35,135)  
Samuel S. Woodley, Ph.D. (Reg. No. 43,287)  
Jonathan M. Spenner, Ph.D. (Reg. No. 57,268)  
Flynn Barrison (Reg. No. 53,970)  
DARBY & DARBY P.C.  
P.O. Box 5257  
New York, New York 10150-5257  
(212) 527-7719  
(212) 527-7701 (Fax)  
Attorneys/Agents For Applicant

#### Attachments:

- Tab A: a copy of the "Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371" (the "371 Transmittal") as submitted December 29, 2004;
- Tab B: (Redacted) Monthly Statement of Deposit Account No. 04-0100, dated January 31, 2005;
- Tab C: (Redacted) Monthly Statement of Deposit Account No. 04-0100, dated August 2005; and
- Tab D: a copy of the U.S. Patent and Trademark Office Decision dated December 30, 2005 (the "Decision").

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**TRANSMITTAL LETTER TO THE UNITED STATES  
DESIGNATED/ELECTED OFFICE (DO/EO/US)  
CONCERNING A SUBMISSION UNDER 35 U.S.C. 371**

ATTORNEY'S DOCKET NUMBER  
04270/0202280-US0  
U.S. APPLICATION NO. (If known, see 37 CFR 1.5)

INTERNATIONAL APPLICATION NO. PCT/GB2003/002848	INTERNATIONAL FILING DATE 3 July 2003	PRIORITY DATE CLAIMED 3 July 2002
TITLE OF INVENTION NUCLEAR HORMONE RECEPTOR		
APPLICANT(S) FOR DO/EO/US Christopher B. Phelps et al.		

Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:

1. ☒ This is a **FIRST** submission of items concerning a submission under 35 U.S.C. 371.
2. ☐ This is a **SECOND** or **SUBSEQUENT** submission of items concerning a submission under 35 U.S.C. 371.
3. ☐ This is an express request to begin national examination procedures (35 U.S.C. 371 (f)). The submission must include items (5), (6), (9) and (21) indicated below.
4. ☐ The US has been elected (Article 31).
5. ☒ A copy of the International Application as filed (35 U.S.C. 371 (c)(2))
  - a. ☒ is attached hereto (required only if not communicated by the International Bureau).
  - b. ☐ has been communicated by the International Bureau.
  - c. ☐ is not required, as the application was filed in the United States Receiving Office (RO/US).
6. ☐ An English language translation of the International Application as filed (35 U.S.C. 371 (c)(2)).
  - a. ☐ is attached hereto.
  - b. ☐ has been previously submitted under 35 U.S.C. 154(d)(4).
7. ☐ Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371 (c)(3))
  - a. ☐ are attached hereto (required only if not communicated by the International Bureau).
  - b. ☐ have been communicated by the International Bureau.
  - c. ☐ have not been made; however, the time limit for making such amendments has NOT expired.
  - d. ☐ have not been made and will not be made.
8. ☐ An English language translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371 (c)(3)).
9. ☐ An oath or declaration of the inventor(s) (35 U.S.C. 371 (c)(4)).
10. ☐ An English language translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371 (c)(5)).

Items 11 to 20 below concern document(s) or information included:

11. ☐ An Information Disclosure Statement under 37 CFR 1.97 and 1.98.
12. ☐ An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.
13. ☒ A preliminary amendment.
14. ☒ An Application Data Sheet under 37 CFR 1.76.
15. ☐ A substitute specification.
16. ☐ A power of attorney and/or change of address letter.
17. ☐ A computer-readable form of the sequence listing in accordance with PCT Rule 13ter.2 and 37 CFR 1.821 - 1.825.
18. ☐ A second copy of the published International Application under 35 U.S.C. 154(d)(4).
19. ☐ A second copy of the English language translation of the international application under 35 U.S.C. 154(d)(4).
20. ☒ Other Items or Information: Affirmation of Claim for Priority and copy of PCT/IB/304; Certificate of Express Mailing

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U.S. APPLICATION NO. (if known, see 37 CFR 1.5)		INTERNATIONAL APPLICATION NO. PCT/GB2003/002848		ATTORNEY'S DOCKET NUMBER 04270/0202280-US0	
21. The following fees are submitted:					
<input checked="" type="checkbox"/> a) Basic national fee .....\$300.00				\$	300.00
<input type="checkbox"/> b) Examination fee .....\$200.00				\$	
<input type="checkbox"/> c) Search fee .....\$500.00				\$	
<b>TOTAL OF ABOVE CALCULATIONS =</b> \$1000.00				\$	300.00
<input checked="" type="checkbox"/> Additional fee for specification and drawings filed in paper over 100 sheets (excluding sequence listing or computer program listing filed in an electronic medium). The fee is \$250 for each additional 50 sheets of paper or fraction thereof.					
Total Sheets	Extra sheets	Number of each additional 50 or fraction thereof (round up to a whole number)	RATE		
101 - 100 =	1 /50 =	1	x \$250.00		
Surcharge of \$130.00 for furnishing the oath or declaration later than 30 months from the earliest claimed priority date (37 CFR 1.492 (e)).				\$	
<b>CLAIMS</b>	<b>NUMBER FILED</b>	<b>NUMBER EXTRA</b>	<b>RATE</b>		
Total claims	- 20 =		x	\$	
Independent claims	- 3 =		x	\$	
MULTIPLE DEPENDENT CLAIM(s) (if applicable)			+	\$	
<b>TOTAL OF ABOVE CALCULATIONS =</b>				\$	300.00
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27. The fees indicated above are reduced by 1/2.				\$	
<b>SUBTOTAL =</b>				\$	300.00
Processing fee of \$130.00 for furnishing the English translation later than 30 months from the earliest claimed priority date (37 CFR 1.492 (f)).				\$	
<b>TOTAL NATIONAL FEE =</b>				\$	300.00
Fee for recording the enclosed assignment (37 CFR 1.21 (h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31). \$40.00 per property				\$	
<b>TOTAL FEES ENCLOSED =</b>				\$	300.00
				Amount to be refunded:	\$
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a. <input checked="" type="checkbox"/> A check in the amount of \$ 300.00 to cover the above fees is enclosed.					
b. <input type="checkbox"/> Please charge my Deposit Account No. _____ in the amount of \$ _____ to cover the above fees. A duplicate copy of this sheet is enclosed.					
c. <input checked="" type="checkbox"/> The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 04-0100. A duplicate copy of this sheet is enclosed.					
d. <input type="checkbox"/> Fees are to be charged to a credit card. <b>WARNING:</b> Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.					
<b>NOTE:</b> Where an appropriate time limit under 37 CFR 1.495 has not been met, a petition to revive (37 CFR 1.137 (a) or (b)) must be filed and granted to restore the International Application to pending status.					
SEND ALL CORRESPONDENCE TO:			SIGNATURE: <u>Paul F. Fehlner, Ph.D.</u>		
Paul F. Fehlner, Ph.D. DARBY & DARBY P.C. P.O. Box 5257 New York, New York 10150-5257 (212) 527-7665			NAME		
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**United States  
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**Requested Statement Month:** August 2005  
**Deposit Account Number:** 040100  
**Name:** DARBY & DARBY P.C.  
**Attention:** ANGELINA DILULLO  
**Address:** 805 THIRD AVENUE  
**City:** NEW YORK  
**State:** NY  
**Zip:** 10022-7513  
**Country:** UNITED STATES OF AMERICA

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**REDACTED**

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**REDACTED**

08/31 12	10520056	04270/0202280-US0	1632		\$44,416.02
08/31 13	10520056	04270/0202280-US0	1642	-\$500.00	\$44,416.02
08/31 14	10520056	04270/0202280-US0	1615	\$400.00	\$44,016.02
08/31 15	10520056	04270/0202280-US0	1616	\$400.00	\$43,616.02
08/31 16	10520056	04270/0202280-US0	1616	\$360.00	\$43,256.02
08/31 17	10520056	04270/0202280-US0	1681	\$250.00	\$43,006.02
			1615	\$1,000.00	\$42,006.02

**REDACTED**

d



To: Jonathan Spenner

ATTY REVIEWED JS

DATE: 01/23/06  
04270/0202280

**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

December 30, 2005

DARBY & DARBY P.C.  
P. O. BOX 5257  
NEW YORK, NY 10150-5257  
US

Dear Sir/Madam,

Your refund request for 10520056 in the amount of \$2,610.00 has been denied .

Authorization was given to charge any additional fees in the Transmittal Letter.

Sincerely,

*Rita White*  
RITA WHITE  
PCT - National  
703 308-9140-x231